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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

SAMY ABDOU, M.D., an individual,

Plaintiff and Counterclaim  
Defendant,

vs.

ALPHATEC SPINE, INC., a California  
Corporation,

Defendant and Counterclaimant.

Case No. 3:12-cv-01804-BEN-RBB

**ORDER GRANTING IN PART  
DR. ABDOU'S *EX PARTE*  
MOTION FOR LEAVE TO FILE  
A SUR-REPLY IN FURTHER  
OPPOSITION TO ALPHATEC'S  
MOTION FOR SUMMARY  
JUDGMENT OF INVALIDITY**

[Docket No. 62]

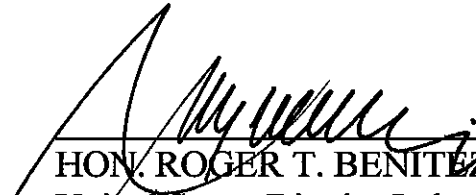
On January 10, 2014, Alphatec Spine, Inc. submitted its Reply in Support of Alphatec's Motion for Summary Judgment of Invalidity, including a Supplemental Declaration of Kevin T. Foley, M.D. (Docket No. 59-6) and "Evidentiary Objections and Motion to Strike Declaration of Ali Moshirfar, M.D." (Docket No. 59-7.)

The Court has considered Dr. Abdou's *Ex Parte* Motion for Leave to File a Sur-Reply in Further Opposition to Alphatec's Motion for Summary Judgment of Invalidity and other supporting papers.

1 After consideration of the moving papers submitted by Dr. Abdou, the court  
2 **GRANTS IN PART** Dr. Abdou's *Ex Parte* Motion. Dr. Abdou's proffered sur-reply  
3 both addresses Alphatec's evidentiary objections (Sur-Reply, Section B [Docket No.  
4 62-2], at 5-8) as well as re-argues the merits of his opposition to Alphatec's motion for  
5 summary judgment (Sur-Reply [Docket No. 62-2], at 1-4). Accordingly, Dr. Abdou is  
6 granted leave to file an amended version of the proffered sur-reply that consists only  
7 of Section B of the proffered sur-reply (Docket No. 62-2, at 5-8), within three (3)  
8 days of the date this Order is filed.

9 **IT IS SO ORDERED.**

10  
11 Dated: January 30, 2014

  
HON. ROGER T. BENITEZ  
United States District Judge